

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

4200 Wilson Blvd Stop 7100
Arlington VA 20598-7100
Staff Symbol: Ca
Toll-Free: 1-800-280-7118
Fax: 703-872-6113
Email: ARL-PF-
NPFCCCLAIMSINFO@uscg.mil

5890
August 07, 2014

VIA EMAIL: [REDACTED]

City of Monterey Office of the Harbor Master
ATTN: Brian Nelson
250 Figueroa Street
Monterey, CA 93940

RE: 914023-0001

Dear Mr. Nelson:

The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that it will offer \$32,367.54 as full compensation for OPA claim number 914023-0001. This reconsideration determination is based on an analysis of information submitted. Disposition of this reconsideration constitutes final agency action.

If you accept this determination, please sign the enclosed Acceptance / Release Agreement where indicated and return to:

Director
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

If we do not receive the signed original Acceptance / Release Agreement within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you are a Claimant that has submitted other claims to the National Pollution Funds Center, you are required to have a valid Contractor Registration record prior to payment. If you do not, you may register free of charge at www.SAM.gov. If the determination is accepted, your payment will be mailed within 30 days of receipt of the Release Agreement.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 1-800-280-7118.

[REDACTED SIGNATURE]

Chief, Claims Adjudication Division
U.S. Coast Guard

Enclosures: Claim Summary / Determination
Acceptance / Release Agreement

ACCEPTANCE / RELEASE AGREEMENT

Claim Number: 914023-0001

Claimant Name: City of Monterey Office of the
Harbor Master

I, the undersigned, ACCEPT this settlement offer of \$32,367.54 as full and final compensation for removal costs arising from the specific claim number identified above. With my signature, I also acknowledge that I accept as final agency action all costs submitted with subject claim that were denied in the determination and for which I received no compensation.

This settlement represents full and final release and satisfaction of the amounts paid from the Oil Spill Liability Trust Fund under the Oil Pollution Act of 1990 for this claim. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the amounts paid for which I have been compensated under this claim. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from and associated with those amounts paid for which I am compensated for with this settlement offer. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for amounts paid which is the subject of this claim against the Oil Spill Liability Trust Fund (Fund).

This settlement is not an admission of liability by any party.

With my signature, I acknowledge that I accept as final agency action all amounts paid for this claim and amounts denied in the determination for which I received no compensation.

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for those amounts paid for which the Fund has provided compensation, by providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. §§ 287 and 1001).

Title of Person Signing

Date of Signature

Printed Name of Claimant or Authorized Representative

Signature

Title of Witness

Date of Signature

Printed Name of Witness

Signature

*DUNS/EIN/SSN

*Required for Payment

Bank Routing Number

Bank Account Number

CLAIM SUMMARY / DETERMINATION

Claim Number:	914023-0001
Claimant:	City of Monterey Office of the Harbor Master
Type of Claimant:	Corporate
Type of Claim:	Removal Costs
Claim Manager:	Donna Hellberg
Amount Requested:	\$32,367.54

FACTS:

- 1. Oil Spill Incident:** On December 12, 2013, United States Coast Guard Sector San Francisco received notification that the Commercial Fishing Vessel (CFV) ANDREA sank and discharged diesel into the Monterey Bay, a navigable waterway of the US.¹ The incident was reported to the National Response Center (NRC) via report # 1068351 on December 13, 2013. On December 29, 2013, Sector San Francisco in its capacity as the Federal On Scene Coordinator (FOSC), issued a Notice of Federal Interest (NOFI) to Mr. John Mandurrigo. The NOFI indicates that it was mailed certified mail to Mr. Mandurrigo on January 10, 2014.²
- 2. The Claim:** The Claimant, City of Monterey, Office of the Harbormaster presented this removal cost claim to the National Pollution Funds Center (NPFC) in the initial amount of \$33,125.26. The claim was received by the NPFC on February 21, 2014. It is important to note that the Claimant amended their sum certain a couple times with the final amendment to the sum certain being made on July 14, 2014 via email to \$32,367.54.³ The NPFC sent the original settlement package on July 16, 2014 offering the Claimant \$28,467.54. The NPFC denied \$3,900.00 in costs that it determined appeared to be salvage related via Monterey Bay Diving invoice # 6087.
- 3. The Request for Reconsideration:** On August 5, 2014, via e-mail, the Claimant made a written request for Reconsideration to the NPFC. The Reconsideration is for \$3,900.00 of costs previously denied as being salvage in the original Settlement Offer. The Claimant sent via email and facsimile on August 5, 2014, its one page written request for reconsideration stating that it obtained a letter from its response contractor that explains the use of the term "salvage" was not representative of the actions performed by the contractor and that all actions undertaken were in fact for the movement of the vessel across the waterway where it was to be later salvaged. It is important to note that the Claimant did not present the salvage invoices to the NPFC for reimbursement.

NPFC Determination on Reconsideration

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

¹ See, USCG MISLE Case # 666039, Activity ID # 4768911.

² See, NOFI dated December 29, 2013.

³ See, Email from Claimant to NPFC dated July 14, 2014.

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

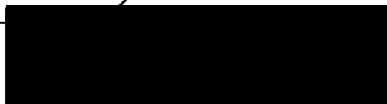
The NPFC Claims Manager has reviewed the actual cost invoices and dailies to confirm that the Claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable "removal actions" under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were determined by the FOSC, and (4) whether the costs were adequately documented and reasonable.

Upon review of the new information provided by the Claimant on reconsideration, the NPFC has determined that the \$3,900.00 originally denied as being related to salvage operations vice oil spill response was miscategorizd by the NPFC and should be paid. Based on the contractor's explanation that use of the word "salvage" in the invoicing is not representative of the work being for salvage activity. The contractor further stated that the hours billed on invoice # 6087 were strictly for containing the leaks within the vessel, cleaning the spill site, raising the vessel for de-fueling, pumping water from the vessel, and assisting in the transport of the vessel to the haul-out site which was coordinated with the FOSC.

Based on the foregoing, the NPFC hereby determines that the OSLTF will pay \$32,367.54 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #914023-0001.

DETERMINED AMOUNT: \$32,367.54

Claim Supervisor:



Date of Supervisor's review: 8/7/14

Supervisor Action: *Reconsideration offer approved as stated above*

Supervisor's Comments: